

[BILLING CODES: []]

FEDERAL DEPOSIT INSURANCE CORPORATION

5 CFR Sections 3201.101, .102 and .103

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY. This proposal would amend existing FDIC ethics regulations involving extensions of credit, ownership of stock, and definitions. This proposal would implement Public Law 108-198, the Preserving Independence of Financial Institution Examinations Act of 2003, which amended sections 212 and 213 of title 18 of the United States Code. These sections continue generally to impose criminal penalties on examiners' borrowing from banks they have examined, and financial institutions' extending a loan to anyone who examines or has authority to examine that institution. The amendment, however, decriminalizes extensions of credit to examiners for credit cards and for primary residential home loans from institutions that they examine or have authority to examine if these loans are made on the same terms and conditions as are available to other cardholders and borrowers and satisfy other criteria contained in the statute as amended. Additionally, the proposed regulation clarifies, and makes minor revisions to, section 3201.103 which restricts FDIC employees' acquisition, ownership, or control of securities of FDIC-insured depository institutions and certain holding companies, and section 3201.101 which defines terms used in part 3201.

DATES: Comments must be received on or before 30 days from date of publication in the Federal Register.

ADDRESSES:

FDIC: You may submit comments, identified by RIN number by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web Site: <http://www.fdic.gov/regulations/laws/federal.propose.html>. Follow instructions for submitting comments on the Agency Web Site.
- E-mail: Comments@FDIC.gov. Include the RIN number in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.
- Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html> including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

FDIC: Robert J. Fagan, Ethics Program Manager, Legal Division, (202) 898-6808; Richard Osterman, Senior Counsel, Legal Division, (202) 898-7028; and Michelle Borzillo, Counsel, Legal Division, (202) 898-7400.

SUPPLEMENTARY INFORMATION:

I. Background

The proposed regulation addresses issues involving extensions of credit to all FDIC employees, including FDIC employees covered by criminal statutes pertaining to examiners, members of the Board of Directors, Division and Office Directors, and their direct subordinates, as well as employees in the Corporate Employee Program who perform examiner functions (“covered employees”). The proposal would also clarify and make minor revisions to employee ownership of stock and the definitions used in the regulation.

On December 19, 2003, the President signed Public Law 108-198, the Preserving Independence of Financial Institution Examinations Act of 2003. The bill amended sections 212 and 213 of title 18 of the United States Code. These sections continue generally to impose criminal penalties on examiners’ borrowing from banks they have examined, and financial institutions’ extending a loan to anyone who examines or has authority to examine that institution. The amendment, however, decriminalizes extensions of credit to examiners for credit cards and for primary residential home loans from institutions that they examine or have authority to examine if these loans are made on the same terms and conditions as are available to other cardholders and borrowers.

The amended statute at 18 U.S.C. § 212 provides that any officer, director, or employee of a financial institution, who makes or grants any loan or gratuity, to any examiner or assistant

examiner who examines or has authority to examine such bank, branch, agency, organization, corporation, association, or institution is subject to criminal penalties.

Under 18 U.S.C. § 213, as amended, any examiner or assistant examiner who accepts a loan or gratuity, except for primary residential loans or credit cards described in this proposed rule, from any bank, branch, agency, organization, corporation, association, or institution examined by the examiner or from any person connected with it is subject to criminal penalties and will be disqualified from holding office as an examiner.

On April 7, 2004, the Board adopted the Interim Policy on Credit Cards and Home Mortgages pending revisions to the FDIC's existing regulation on extensions of credit. The Interim Policy permits extensions of credit in the form of home mortgages for primary residences and credit cards under certain conditions. The attached proposed rule would replace the interim policy and supersede section 3201.102.¹

Additionally, the proposed regulation clarifies, and makes minor revisions to, section 3201.103 which restricts FDIC employees' acquisition, ownership, or control of securities of

¹ Under the regulation, before being modified by the Interim Policy adopted by the Board in 2004, the staff responsible for examination of FDIC-insured depository institutions were prohibited from obtaining credit from an FDIC-insured state nonmember bank, any subsidiary of such bank, or any person associated with such bank. No exceptions were made for home mortgages. An exception was made for credit cards issued outside the region or field office of assignment. Corporation officials in top management positions were prohibited under the existing regulation from entering into financial obligations with an institution over which the Corporation had primary Federal supervisory authority and its subsidiaries. An employee in the Division of Finance, Division of Insurance and Research, Division of Resolutions and Receiverships, the Legal Division, or who was a member of a standing committee of the Board of Directors, was prohibited from obtaining credit from an FDIC-insured depository institution or its subsidiary for a period of two years after the employee has participated personally and substantially in certain matters affecting the institution, its predecessor, successor, or affiliate. An exception was made for ordinary credit cards.

FDIC-insured depository institutions and certain holding companies. Finally, the proposed regulation makes appropriate revisions to the definitions in section 3201.101.

II. DESCRIPTION OF THE PROPOSAL

The proposed amendment to section 3201.102 retains the existing general prohibitions on borrowings and disqualification provisions for FDIC employees and Board members. The proposed rule authorizes the Ethics Counselor to waive any disqualification based on a determination with the advice of the Legal Division that the waiver is not inconsistent with the standards of ethical conduct for employees of the executive branch as set forth in 5 C.F.R part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality and objectivity with which the FDIC programs are administered.

The proposed rule, in keeping with the amended statutes at 18 U.S.C. sections 212 and 213, eliminates the disqualification for examiners, Board members, Division and Office Directors, and employees in the Corporate Employee Program performing examiner duties (defined as “covered employees”), who obtain credit cards on terms and conditions no more favorable than generally available to other borrowers. Covered employees assigned to a bank from which they hold a credit card must inform their supervisor and ethics official prior to the examination or other participation in a matter involving the bank if any issue exists such as non-current payments, a billing dispute, or if negotiating with the bank concerning the debt. In certain cases, a disqualification will be required. Covered employees and their spouses and minor children are prohibited from applying for or receiving a credit card from an institution if the covered employee is assigned or about to be assigned to an examination of that institution.

Under the proposed rule, disqualification will continue to be required for residential real property loans on a primary residence, but such loans are now permitted if the terms and conditions are no more favorable than generally available to other similarly situated credit worthy borrowers. The proposed rule covers limitations, restrictions and the mechanism for waiver of the disqualification from participation in an examination or other matter.

A general waiver would be available under the proposed rule in certain circumstances. Specifically, the proposed rule would authorize the Ethics Counselor to waive any disqualification based on a determination with the advice of the Legal Division that the waiver is not inconsistent with the standards of ethical conduct for employees of the executive branch as set forth in 5 C.F.R. part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality and objectivity with which the FDIC programs are administered.

In cases where a covered employee renegotiates credit incurred prior to FDIC employment or reassignment of duties, the Ethics Counselor, in consultation with the covered employee's supervisor, may waive the prohibition when the covered employee's participation is not prohibited by law and does not result in a loss of impartiality or objectivity or misuse of the employee's position.

In addition, this proposed rule amends section 3201.103, which generally provides, with certain exceptions, that no FDIC employee, spouse of an employee, or minor child of an employee may acquire, own, or control, directly or indirectly, a security of an FDIC-insured depository institution or its affiliate. The existing regulation provides six exceptions to that

general prohibition: (i) acquiring, owning, or controlling securities of bank holding companies or their nonbank subsidiaries that are publicly traded, not engaged in banking, and exempt from the Bank Holding Company Act; (ii) acquiring, owning, or controlling securities of certain nonfinancial savings association holding companies; (iii) retaining securities of an insured depository institution or affiliate if retention was permitted under 12 CFR Part 336 prior to a certain date, prior to employment with the FDIC, or when the securities were acquired by a spouse prior to his or her marriage to the employee; (iv) acquiring, owning, or controlling securities of an insured depository institution or affiliate if acquired by inheritance, gift, stock split, involuntary stock dividend, merger, acquisition, or other change in corporate ownership, exercise of preemptive right, or otherwise without specific intent to acquire it, or if acquired by a spouse of minor child as part of a compensation package from their employer; (v) acquiring, owning, or controlling an interest in certain publicly traded or publicly available investment funds; and (vi) using an insured depository institution or affiliate as a custodian or trustee of accounts containing tax-deferred retirement funds. The proposed amendment narrows the scope of these prohibitions and generally clarifies the prohibitions of this section.

The proposed amendment narrows the scope by removing the prohibitions on ownership of securities with respect to insured depository institution affiliates, other than certain holding companies. The holding companies covered by the prohibition under the proposed amendment are: (i) bank holding companies; (ii) savings and loan holding companies; (iii) financial holding companies; and (iv) companies that (a) own or control an insured depository institution, (b) are not supervised by the Federal Reserve Board (FRB) or the Office of Thrift Supervision (OTS), and (c) are either engaged in banking or are not publicly traded. The reason for eliminating other affiliates from the prohibition is that the potential for a conflict of interest is generally only

present when there is ownership or control of a company that in turn has control of an insured depository institution; affiliates other than holding companies do not own, and generally do not control, an insured depository institution that is their parent or sister organization.

The proposed amendment also reorganizes the descriptions of the prohibited securities and provides references to relevant listings on the websites of the various banking agencies. The intent of the reorganization is to make this section clearer and more useable. The proposed amendment retains the other existing exceptions, limitations, and divestiture requirements.

The proposed amendment specifically prohibits ownership of a security of an FDIC-insured bank or savings association; a bank holding company that is subject to supervision by the Federal Reserve Board (FRB); or a savings and loan holding company that is subject to supervision by the Office of Thrift Supervision (OTS); a financial holding company that is subject to supervision by the FRB; and a company that (i) owns or controls an FDIC-insured bank or savings association, (ii) is not an FRB-supervised bank holding company, an OTS-supervised savings and loan holding company, or an FRB-supervised financial holding company, and (iii) either is primarily engaged in banking or is not publicly traded on a U.S. securities exchange. These categories would, in appropriate cases, cover companies that control industrial banks. The proposed amendment also creates a specific exception for acquisition, ownership, or control of securities of a unitary thrift holding company.

As with the extensions of credit rule, and consistent with supplemental rules of the other federal banking agencies, a general waiver would be available under the proposed rule in certain circumstances.

Finally, the definition section of the regulation at 3201.101(d) would be amended to add and revise definitions for terms used in this regulation and delete terms no longer used.

Request for Comments

The FDIC welcomes comments on all aspects of this proposal.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106-102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires that each federal Agency either certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis (IRFA) of the proposal and publish the analysis for comment. See 5 U.S.C. 603, 605. The Small Business Administration (SBA) defines small banks as those with less than \$150 million in assets. The proposed rule decriminalizes under certain circumstances extensions of credit to FDIC examiners for credit cards and for primary residential home loans from institutions that they examine and clarifies certain restrictions on the acquisition, ownership, or control of securities of FDIC-insured depository institutions and certain holding companies on the part of FDIC employees. The proposed rule does not impose any obligations or restrictions on depository institutions, including small depository institutions. On this basis, the FDIC certifies pursuant to 5 U.S.C. 605(b) that this proposed rule, if it is adopted in final form, will not have a significant impact on a substantial number of small entities. Commenters are nevertheless invited to provide the FDIC with any information they may have about the likely quantitative effects of the proposal.

Paperwork Reduction Act

The FDIC has determined that this proposed rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects

5 CFR section 3201.101
5 CFR section 3201.102
5 CFR section 3201.103

Ethical conduct; extensions of credit and loans from FDIC-insured depository institutions.

Prohibitions on ownership of securities of FDIC-insured depository institutions.

Authority and Issuance

For the reasons set forth in the preamble, the FDIC proposes to amend title 5 of the Code of Federal Regulations as follows:

1. The authority citation for section 3201.101 is revised to add the following citation to the list of statutory authorities:

Authority: 18 U.S.C. §§ 212, 213.

2. Paragraph (d) of § 3201.101 is revised to read as follows:

§ 3201.101 General

* * * * *

(d) *Definitions.*

For purposes of this part, the following definitions apply:

(1) *Affiliate*, as defined in 12 U.S.C. 1841(k), means any company that controls, is controlled by, or is under common control with another company.

(2) *Appropriate director* means the head of a Washington office or division or the highest ranking official assigned to a regional office in each division or the Ethics Counselor.

(3) *Covered employee* means:

(i) Members of the FDIC Board of Directors and any employee required to file a public or confidential financial disclosure under 5 C.F.R. part 2634 who holds a position immediately subordinate to such Board member;

(ii) the director of any Washington division or office and the director any regional office, and any employee required to file a public or confidential financial disclosure report under 5 C.F.R. part 2634 who holds a position immediately subordinate to such director;

(iii) an FDIC examiner;

(iv) any other FDIC employee whose duties and responsibilities include the examination of or the participation in the examination of any financial institution;

(v) any other FDIC employee whose duties and responsibilities, as determined by the Chairman or Ethics Counselor after notice to the employee, require application of the prohibition on borrowing contained in this section to ensure public confidence that the FDIC's programs are conducted impartially and objectively.

(4) *Employee* means an officer or employee, other than a special Government employee, of the Corporation, including a member of the Board of Directors appointed under the authority of 12 U.S.C. 1812(a)(1)(C). For purposes of 5 CFR part 2635 and §§ 3201.103 and 3201.104, employee includes any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation.

(5) *Ethics Counselor* means an officer or employee who is designated by the head of the agency to coordinate and manage the agency's ethics program, and includes the Corporation's Alternate Ethics Counselor.

(6) *Security* includes an interest in debt or equity instruments. The term includes, without limitation, a secured or unsecured bond, debenture, note, securitized assets, commercial paper, and all types of preferred and common stock. The term includes an interest or right in a security, whether current or contingent, a beneficial or legal interest derived from a trust, the right to acquire or dispose of any long or short position, an interest convertible into a security, and an option, right, warrant, put, or call with respect to a security. The term security does not include a deposit account.

(7) *State nonmember bank* means any State bank as defined in 12 U.S.C. 1813(e) which is not a member of the Federal Reserve System.

(8) *Subsidiary*, as defined in 12 U.S.C. 1813(w), means any company which is owned or controlled directly or indirectly by another company.

3. Section 3201.102 is revised to read as follows:

§ 3201.102 Extensions of credit and loans from FDIC-Insured Institutions.

(a) *Credit subject to this section.* The prohibition, disqualification, and retention provisions of this section apply to a current or contingent financial obligation of the employee. For purposes of this section, a current or contingent financial obligation of an employee's spouse or minor child is considered to be an obligation of the employee.

(b) *Disqualification applicable to FDIC employees generally.* Except as provided in this section:

(1) No FDIC employee may participate in an examination, audit, visitation, review, or investigation, or any other particular matter involving an FDIC-insured institution, subsidiary or other person with whom the employee has an outstanding extension of credit.

(2) For employees, other than covered employees as defined in § 3201.101(d)(3), disqualification is not required if the credit was extended through the use of a credit card on the same terms and conditions as are offered to the general public.

(3) The Comptroller of the Currency and the Director of the Office of Thrift Supervision shall be disqualified from any matter pending before the Board of Directors to the same extent as an FDIC employee subject to paragraph (c) of this section.

(c) Prohibited borrowing by covered employees. (1) Prohibition on covered employee borrowing. Except as provided below, no covered employee shall, directly or indirectly, accept or become obligated on a loan or extension of credit, whether current or contingent, from any FDIC-insured State nonmember bank or its subsidiary or from an officer, director, or employee, of any FDIC-insured State nonmember bank or its subsidiary.

(2) Exceptions: (i) Credit Cards. A covered employee (or spouse or minor child of a covered employee) may obtain and hold a credit card account established under an open end consumer credit plan and issued by an FDIC-insured State nonmember bank or its subsidiary subject to the following conditions:

- a)* The cardholder must satisfy all financial requirements for the credit card account that are generally applicable to all applicants for the same type of credit card account; and
- b)* The terms and conditions applicable with respect to the account and any credit extended to the cardholder under the account are no more favorable generally to the cardholder than the terms and conditions that are generally applicable to credit card accounts offered by the same bank (or the same subsidiary) to other cardholders in comparable circumstances under open end consumer credit plans.

(ii) Loans secured primarily by principal residence. A covered employee (or a spouse or minor child of a covered employee) may obtain and hold a loan from an FDIC-insured State nonmember bank or its subsidiary subject to the following conditions:

- a)* The loan is secured by residential real property that is the principal residence of the borrower. The borrower may retain the loan if the residential real property ceases to be the principal residence. However, any subsequent renewal or renegotiation of the original terms of such a loan must meet the requirements of this paragraph;
- b)* The borrower may not apply for the loan while the covered employee participates in any examination, the review of any application, or any other supervisory or regulatory or other particular matter directly affecting the State nonmember bank or its subsidiaries;
- c)* The borrower must satisfy all financial requirements for the loan that are generally applicable to all applicants for the same type of residential real property loan; and
- d)* The terms and conditions applicable with respect to the loan and any credit extended to the borrower under the loan are no more favorable generally to the borrower than the terms and conditions that are generally applicable to residential real property loans offered by the same State nonmember bank or same subsidiary to other borrowers in comparable circumstances for residential real property loans.

(3) *Disqualification of covered employees.* A covered employee shall not participate in an examination, audit, visitation, review, or investigation, or other particular matter involving an FDIC-insured depository institution or other person with whom the covered employee has an outstanding extension of credit, or with whom the covered employee is negotiating an extension of credit.

i) *Payment dispute, delinquency, or other significant matter concerning credit card debt.* Disqualification is not required if the credit is extended through the use of a credit card. However, disqualification will be required when a covered employee is delinquent on payments, has a billing dispute, is negotiating with the institution, or has any other significant issue regarding the credit card debt. The covered employee must notify his or her supervisor and deputy ethics official of a dispute in writing.

ii) *Primary residence mortgage loan.* Disqualification will be required if the covered employee is negotiating for, has an application pending for, or enters into a primary residence mortgage loan. This disqualification will cease when the loan is sold, even if the loan originator retains the loan servicing.

(4) *Other Limitations on covered employees.* i) A covered employee shall not accept or become obligated on an otherwise permissible loan if the credit relationship would materially impair the covered employee's ability to participate in matters that are central to the performance of the covered employee's official duties, or if the covered employee has been advised of an assignment to handle a matter involving that institution.

ii) Covered employees to whom the prohibitions in this section apply may not apply for a credit card or primary residence mortgage loan from a State non-member bank or

subsidiary that the covered employee is assigned to examine or participate in a matter involving that institution, or if such an assignment is imminent.

(5) *Pre-existing credit.* i) This section does not prohibit a covered employee, or any FDIC employee who becomes a covered employee as a result of any reassignment of duties or position, from retaining a loan or extension of credit from a State nonmember bank or its subsidiary on its original terms if the loan or extension of credit was incurred prior to employment by the FDIC or as a result of the sale or transfer of a loan or credit to a State non-member bank or its subsidiary or the conversion or merger of the lender into a State non-member bank or its subsidiary. Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan or extension of credit subject to the prohibitions in this paragraph.

ii) An employee may request that an exception be made to the prohibitions to permit renegotiation of a pre-existing extension of credit. If a covered employee would experience financial or other hardship unless allowed to renegotiate a pre-existing loan, the covered employee may submit a written request to his or her supervisor and to the Ethics Counselor, describing the reasons for renegotiation, the original and the proposed terms and conditions, including whether the financial institution makes such terms generally available to the public, and any attempts by the covered employee to move the loan to a non-prohibited source. After consideration of the request, the covered employee's supervisor and the Ethics Counselor jointly may grant the waiver upon a finding that renegotiation is not prohibited by law, and that the waiver does not result in a

loss of impartiality or objectivity or misuse of the employee's position. To be effective, the waiver must be in writing.

(d) *Two-Year prohibition on acceptance of credit from an FDIC-insured depository institution.* An FDIC employee shall not, directly or indirectly, accept or become obligated on any extension of credit from an FDIC-insured depository institution or its subsidiary for a period of two years from the date of the employee's last personal and substantial participation in an audit, resolution, liquidation, assistance transactions, supervisory proceeding, or internal agency deliberation affecting that particular institution, its predecessor or successor, or any subsidiary of such institution. This prohibition does not apply to credit obtained through the use of a credit card or a residential real property loan secured by the principal residence of the employee, subject to the same conditions, limitations, disqualification, and waiver procedures applicable to covered employees under this section.

(e) *Waiver of general disqualification.* The Ethics Counselor may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the Legal Division that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law, and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuses of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which the FDIC's programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

4. Section 3201.103 is revised to read as follows:

§3201.103 Prohibition on Acquisition, Ownership, or Control of Securities of FDIC-insured Depository Institutions and Certain Holding Companies

(a) *Prohibition on Acquisition, Ownership, or Control.* Except as provided in (b) below, no employee, spouse of an employee, or minor child of an employee may acquire, own, or control, directly or indirectly, a security of any of the following:

- (1) a bank or savings association that is insured by the Federal Deposit Insurance Corporation (FDIC) (Check the FDIC's website to determine if a particular bank or savings association is FDIC-insured: <http://www2.fdic.gov/idasp/main.asp>),
- (2) a bank holding company that is subject to supervision by the Federal Reserve Board (FRB) (Check the FRB's website to determine if a particular company is a bank holding company subject to FRB supervision: [http://132.200.33.161/nicSearch/servlet/NICServlet?\\$GRP\\$=INSTSEARCH&REQ=DOM&MODE=SEARCH](http://132.200.33.161/nicSearch/servlet/NICServlet?GRP=INSTSEARCH&REQ=DOM&MODE=SEARCH)),
- (3) a savings and loan holding company that is subject to supervision by the Office of Thrift Supervision (OTS) (Check the OTS's website to determine if a particular company is a savings and loan holding company subject to OTS supervision: <http://www.ots.treas.gov/pagehtml.cfm?catNumber=25>),

(4) a financial holding company that is subject to FRB supervision (Check the FRB's website to determine if a particular company is a financial holding company subject to FRB supervision: <http://www.federalreserve.gov/generalinfo/fhc/>), and

(5) a company that (i) owns or controls an FDIC-insured bank or savings association, (ii) is neither an FRB-supervised bank holding company, an OTS-supervised savings and loan holding company, nor an FRB-supervised financial holding company, and (iii) is either primarily engaged in banking or not publicly traded on a U.S. securities exchange.

(b) *Exceptions.* Notwithstanding the prohibitions of subsection (a), but subject to the limitations of subsection (c), an employee, or the spouse or minor child of an employee may do any or all of the following:

(1) Acquire, own, or control the securities of a unitary thrift holding company (i.e., a savings and loan holding company that is subject to OTS supervision but whose principal business is neither banking nor activities closely related to banking).

(Check the ethics website for a list of unitary thrift holding companies:

<http://fdic01.prod.fdic.gov/division/legal/ethics/>);

(2) Own or control a security of an entity described in subsection (a) if the security was permitted to be retained by the employee under 12 CFR part 336 prior to May 25, 1995, was obtained prior to commencement of employment with the Corporation, or was acquired by a spouse prior to marriage to the employee;

(3) Own, or control a security of an entity described in subsection (a) if:

- (i) the security was acquired by inheritance, gift, stock-split, involuntary stock dividend, merger, acquisition, or other change in corporate ownership, exercise of preemptive right, or otherwise without specific intent to acquire the security, or, by an employee's spouse or minor child as part of a compensation package in connection with his or her employment;
- (ii) the employee makes full, written disclosure on FDIC form 2410/07 to the Ethics Counselor within 30 days of the commencement of employment or the acquisition of the interest; and
- (iii) the employee is disqualified in accordance with 5 CFR part 2635, subpart D, from participating in any particular matter that affects his or her financial interests, or that of his or her spouse or minor child;

(4) Acquire, own, or control an interest in a publicly-traded or publicly-available investment fund provided that, upon initial or subsequent investment by the employee (excluding ordinary dividend reinvestment), the fund does not have invested, or indicate in its prospectus the intent to invest, more than 30 percent of its assets in the securities of one or more entities described in subsection (a) and the employee neither

exercises control nor has the ability to exercise control over the financial interests held in the fund; and

- (5) Use an FDIC-insured depository institution or an affiliate of an FDIC-insured depository institution as custodian or trustee of accounts containing tax-deferred retirement funds.

(c) *Divestiture.* Based upon a determination of substantial conflict under 5 CFR 2635.403(b), the Ethics Counselor may require an employee, or the spouse or minor child of an employee, to divest a security he or she is otherwise authorized to acquire, own, control, or use under subsection (b).

(d) *Waiver.* The Ethics Counselor may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the Legal Division that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law, and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuses of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which the FDIC's programs are administered. A waiver under this paragraph may impose appropriate conditions.

By order of the Board of Directors.

Dated at Washington, D. C., this __ day of _____, 2005.

Federal Deposit Insurance Corporation,

Robert E. Feldman

Executive Secretary

(SEAL)

Concurred in this ____ day of _____, 2005

Marilyn L. Glynn

General Counsel, Office of Government Ethics